

PAROLE BOARD[205]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 906.3, the Board of Parole hereby gives Notice of Intended Action to amend Chapter 2, “Agency Procedure for Rule Making,” Chapter 3, “Petitions for Rule Making,” Chapter 4, “Declaratory Orders,” Chapter 5, “Fair Information Practices,” Chapter 6, “Public Communications and Records,” Chapter 7, “Victim Notification,” Chapter 8, “Parole and Work Release Considerations,” Chapter 11, “Parole Revocation,” Chapter 14, “Executive Clemency,” Chapter 15, “Appeal of Decisions,” and Chapter 16, “Waiver and Variance Rules,” Iowa Administrative Code.

All of the agency’s rules were reviewed as part of the comprehensive five-year review required under Iowa Code section 17A.7. These proposed amendments are designed to eliminate outdated or redundant rules, as well as eliminate any rules that are inconsistent or incompatible with statutes or other rules. The amendments also reflect changes to conform the rules to current, more efficient practices.

The proposed amendments to Chapters 2, 3, 4, and 16 are nonsubstantive corrections to change the title of the designated official from “Executive Director” to “Chairperson.”

The proposed amendments to Chapters 5, 6, and 7 reflect updated communication methods and changes to interview proceedings.

The proposed amendments to Chapters 8 and 14 are necessary to bring the rules into conformity with recent changes in the law regarding juveniles serving life sentences. The proposed amendments also update the rules to reflect that hearings are now conducted via videoconferencing and that neither the board, victims, nor spectators are present at the correctional institutions during the interviews.

The proposed amendments to Chapter 11 are designed to make the revocation hearing process more efficient while ensuring that parolees receive due process. The amendments reflect the Board’s current practice of utilizing the Iowa Corrections Offender Network (ICON) for submitting reports rather than using the mail. Many of the changes were proposed through a collaborative effort with the Department of Corrections, Community-Based Corrections, and the Iowa State Sheriffs’ and Deputies’ Association.

The proposed amendments to Chapter 15 are designed to clarify the appeals process, as well as to eliminate redundant rules.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 11, 2017. Such written materials should be sent to Chairperson of the Parole Board, 510 East 12th Street, Des Moines, Iowa 50319.

There will be a public hearing on July 11, 2017, from 11 a.m. to 1 p.m. in the Board of Parole Conference Room, 510 East 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any person who intends to attend the public hearing and has special requirements should contact the Board of Parole and notify of specific needs.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 17A, 904A, 906, 908, and 915.

The following amendments are proposed.

ITEM 1. Amend **205—Chapter 2**, introductory paragraph, as follows:

The board of parole hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are ~~printed in the first volume of the Iowa Administrative Code with the following amendments published at~~

<https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site:

ITEM 2. Amend subrule 2.5(1) as follows:

2.5(1) *Written comments.* In lieu of the words “(identify office and address)”, insert “~~Executive Director~~ Chairperson of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

ITEM 3. Amend subrule 2.11(1) as follows:

2.11(1) *General.* In lieu of the words “(specify the office and address)”, insert “~~the executive director~~ Chairperson of the ~~board~~ Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

ITEM 4. Amend **205—Chapter 3**, introductory paragraph, as follows:

The board of parole hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure which are ~~printed in the first volume of the Iowa Administrative Code~~ published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site with the following amendments:

ITEM 5. Amend rule 205—3.3(17A) as follows:

205—3.3(17A) *Inquiries.* In lieu of the words “(designate official by full title and address)”, the text should read “~~the Executive Director~~ Chairperson of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

ITEM 6. Amend **205—Chapter 4**, introductory paragraph, as follows:

The board of parole hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure which are ~~printed in the first volume of the Iowa Administrative Code~~ published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site with the following amendments:

ITEM 7. Amend rule 205—4.5(17A) as follows:

205—4.5(17A) *Inquiries.* In lieu of the words “(designate official by full title and address)”, the text should read “~~the Executive Director~~ Chairperson of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

ITEM 8. Amend **205—Chapter 5**, introductory paragraph, as follows:

The board of parole hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices which are ~~printed in the first volume of the Iowa Administrative Code~~ published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site.

ITEM 9. Amend subrule 5.3(3) as follows:

5.3(3) *Request for access.* Requests for access to records may be made in writing, in person, ~~or~~ by telephone, or by electronic means if the request is for open record information. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests shall include the name, address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

ITEM 10. Amend subrule 5.14(2) as follows:

5.14(2) *Board meeting records.* Agendas, minutes and materials presented to the board are available from the ~~office of the director~~ board's business office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Board meeting records contain information about people who participate in meetings. The information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

ITEM 11. Amend subrule 5.14(3) as follows:

5.14(3) Publications. News releases, annual reports, project reports, ~~board newsletters~~, and related documents are available from the board office. Board news releases, annual reports, and project reports, ~~and newsletters~~ may contain information about individuals, including board staff or members of the board councils or committees. This information is not retrieved by individual identifier.

ITEM 12. Amend subrule 5.14(5) as follows:

5.14(5) Grants. Records on persons receiving grants for various projects or programs are available through the ~~office of the executive director~~ board's business office. These records may contain information about employees or a grantee. This information is not retrieved by individual identifier and is not stored on an automated data processing system. The information is collected under the authority of Iowa Code chapter 904.

ITEM 13. Amend subrule 6.2(1) as follows:

6.2(1) Written communication preferred. ~~The board requests that all communications~~ Communications by a person other than a victim, as defined in rule 205—7.1(915), concerning an inmate, parolee, or work releasee shall be in writing so that the communication may readily be made a permanent part of the case file. Oral communications concerning an inmate, parolee, or work releasee by a person other than a victim will be heard only with the consent of the board.

ITEM 14. Amend rule **205—7.1(915)**, definition of “Notification,” as follows:

“*Notification*” means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit the board from also providing appropriate information to a registered victim by telephone, electronic mail, or other means.

ITEM 15. Amend rule 205—7.5(915) as follows:

205—7.5(915) Written opinions concerning release. A registered victim may submit a written opinion concerning the release of the inmate ~~at any time by mailing the opinion to the board's business office prior to the parole interview~~. The written opinion shall be made a permanent part of the inmate's file and shall be reviewed when the board considers the inmate's prospects for parole.

ITEM 16. Amend rule 205—7.6(915) as follows:

205—7.6(915) Appearances at parole interviews.

7.6(1) A registered victim of a violent crime may appear personally or by counsel at a parole interview to express an opinion concerning the release of the inmate.

7.6(2) If a registered victim of a violent crime intends to appear at a parole interview, the victim ~~must comply with the rules of the department of corrections that require a visitor to a state institution to give prior notice of the intended visit and to receive approval for the visit~~ should communicate such intent to the board's business office or victim liaison prior to the start of the parole interview.

7.6(3) A If intending to appear at a parole interview, a registered victim of a violent crime, or victim's counsel, shall appear at the ~~institution~~ board's business office, or other ICN location as previously arranged, at the time set forth in the notice of parole interview. ~~The victim or counsel shall inform institutional personnel of the purpose of the appearance. Institutional personnel shall coordinate the appearance of the victim or victim's counsel with the board. At the appearance~~ During the parole interview, the board shall permit the victim or victim's counsel to express an opinion concerning the release of the inmate.

7.6(4) Victims shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other victims, spectators, media personnel, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals working in the board's business office building or other ICN location where they may be while participating in the parole interview.

7.6(5) Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor

misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request may result in law enforcement's being called to remove the offending party or parties.

ITEM 17. Amend subrule 8.2(1) as follows:

8.2(1) *Mandatory sentences.* The board shall not grant parole to an inmate serving a mandatory minimum sentence. The board shall not grant work release to an inmate serving a mandatory minimum sentence unless the inmate is within six months of completing the mandatory minimum portion of the sentence. A parole or work release granted contrary to this rule shall be rescinded. Mandatory sentences are as follows:

a. A life sentence imposed for conviction of a Class "A" felony pursuant to Iowa Code section 902.1, except for a life sentence that expressly includes parole eligibility;

b. A mandatory minimum sentence imposed for use of a ~~firearm~~ dangerous weapon pursuant to Iowa Code section 902.7;

c. A mandatory minimum sentence imposed for violation of uniform controlled substance provisions pursuant to Iowa Code section 124.406 or 124.413;

d. A mandatory minimum sentence imposed for being ~~an~~ a habitual offender pursuant to Iowa Code section 902.8;

e. A mandatory minimum sentence imposed for a prior forcible felony pursuant to Iowa Code section 902.11₂;

f. A mandatory minimum sentence imposed for conspiring to manufacture, or delivery of, amphetamine or methamphetamine to a minor pursuant to Iowa Code section 902.8A;

g. A mandatory minimum sentence imposed for offenses specified in Iowa Code section 902.12;

h. Any other mandatory minimum sentence prescribed by statute that is not specifically stated above.

ITEM 18. Rescind and reserve rule **205—8.4(906)**.

ITEM 19. Amend rule 205—8.6(906) as follows:

205—8.6(906) Parole and work release considerations.

8.6(1) Case reviews. The board may review the records of an inmate committed to the custody of the department of corrections and consider the inmate's prospects for parole or work release at any time. The board shall notify an inmate only if the inmate is granted parole or work release, except as provided in 8.16(3).

8.6(2) Interviews. The board may, in its discretion, interview an inmate committed to the custody of the department of corrections at any time.

8.6(3) The board shall review the status of each inmate as directed by the Iowa Code; and shall provide the inmate with notice of its parole or work release decision. After an inmate has been granted work release, the board shall review the inmate's status at least annually from the date of the decision to grant work release.

8.6(4) Class "A" felons, and Class "B" felons serving a sentence of more than 25 years, are excepted from the annual review requirement of 8.6(3). This exception does not apply to Class "A" felons whose life sentence expressly includes parole eligibility.

8.6(5) Inmates serving a mandatory minimum sentence are excepted from the annual review requirements of 8.6(3) until such time as the mandatory minimum has expired.

8.6(6) Department initiated review. The department of corrections may recommend an inmate for parole or work release consideration at any time. ~~The board shall discuss such a recommendation with department staff during the next regularly scheduled board session involving the institution where the inmate in question is incarcerated. The board may, at its discretion, interview the inmate prior to acting upon the recommendation of the department of corrections staff.~~

ITEM 20. Amend rule 205—8.8(906) as follows:

205—8.8(906) Interview notice. The board or the board's designee shall notify an inmate to be interviewed for parole or work release consideration of the time and purpose of the interview. Notice given to the department of corrections shall be considered notice to the inmate. Not less than 20 days prior to the interview, the board shall also notify the department of corrections of the scheduling of the interview, and the department shall make the inmate available to the board ~~at the inmate's institutional residence as scheduled in the notice for the interview.~~ The interview may be conducted electronically by videoconference. However, if health, safety, or security conditions require moving the inmate to another institution or facility prior to the scheduled interview, the department of corrections shall so notify the board.

ITEM 21. Amend rule 205—8.12(906) as follows:

205—8.12(906) Interview procedure. The board ~~may, in its discretion,~~ or board panel ~~shall may, in its discretion,~~ interview the inmate and consider the inmate's records with respect to history, current situation, parole and work release prospects, and other pertinent matters. ~~The~~ If the inmate is interviewed, the board or board panel shall give the inmate ample opportunity to express views and present materials.

ITEM 22. Amend rule 205—8.14(906) as follows:

205—8.14(906) Conduct at parole proceedings.

8.14(1) Parole proceedings shall be open to the public except as otherwise necessary or proper.

8.14(2) Conduct of inmate.

a. Conduct of the inmate shall be in a manner consistent with decorum appropriate for a participant in a public meeting of a governmental body.

b. An inmate may not orally or otherwise communicate with spectators or others present at the parole proceeding except as permitted by the panel or board.

c. The inmate shall speak to the panel or board or counselor only when asked a question or directed otherwise to do so.

d. Each inmate will be given an opportunity to make an independent statement to the panel or board ~~at some point during the parole proceeding.~~ The panel or board may limit this statement in any manner as to topic or time. ~~Specifically subject to this limitation will be persons who have no realistic grounds to believe a parole will be granted, i.e., those with mandatory minimum sentences, those serving life terms, or those having served short times relative to the severity of their crimes and length of their sentences.~~

e. Failure to comply with the direction of the panel or board in limiting statements, in communicating with persons present at the parole proceeding, or any absence of decorum which could disrupt or delay the proceeding may, at the discretion of the board, result in a forfeiture of the right to an interview and a request by the board to have the institutional staff remove the inmate.

f. An inmate who forfeits the right to an interview for reasons under 8.14(2) "*e*" or for any other reason shall not be interviewed again until the inmate's next annual review, or until such earlier time as determined by the board, except that the inmate may make a request for an earlier interview. The request ~~is to~~ must be made in writing to the board through the board liaison officer, the counselor or other institutional staff member, or the ombudsman, together with assurance by the inmate that no repeat of the offending conduct or other offending conduct will occur. A reinterview is subject to the discretion of the panel or board.

8.14(3) Conduct of spectators.

a. Spectators may not participate in the parole proceedings. The number of spectators will be limited by the number of seats provided. Only board staff or institutional staff will be allowed to stand during the interviews or between interviews, except during breaks of the panel or board or as necessary to enter and leave during times designated by the panel or board. An exception will be made for television camera operators.

b. Spectators may not enter or leave the room during interviews or between interviews, except that the board or panel will designate times when persons may enter and leave. This will be done at reasonable intervals, and may be between interviews even though the board or panel does not take a break.

c. Entering and leaving the interview room before and after the interview sessions and during breaks in the interview sessions shall be subject to the restrictions imposed by the board staff of the institution at which the session is being held.

d. Spectators shall make no utterances which are intended to be or can be heard by the inmate or the panel. This includes any conversation among spectators.

e. Spectators shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other spectators, victims, media personnel, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals working in the board's business office building or other ICN location where they may be while observing the parole interview.

f. Any activity deemed inappropriate by the panel ~~or institutional staff~~ under the guidelines in the rules may result in a request by the panel ~~or institutional staff~~ for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request will may result in a request by the panel to have the person or persons removed by the institutional staff law enforcement's being called to remove the offending party or parties.

All spectator places shall be on a first-come, first-served basis in accordance with the rules of the ~~institution or the department of corrections~~ board.

g. A spectator who leaves during a time designated for entering or leaving or during a short break by the panel may retain a place if the person returns at the next time designated for that purpose. A person does not retain a place at the hearing over breaks taken for lunch or dinner or overnight.

8.14(4) Conduct of the media.

a. *General.* Broadcasting, televising, recording and photographing will be permitted in the interview room during open sessions of the board or panel, including recesses between sessions, under the following conditions:

(1) Permission first shall have been granted by the ~~institution or department of corrections, which board chairperson or chairperson's designee, who may prescribe conditions and restrictions for bringing equipment into areas of the institution~~ the board's business office.

(2) Media coverage of any proceeding which is held in closed session under Iowa law is prohibited.

(3) The quantity and types of equipment permitted in the interview room shall be subject to the discretion of the panel or board within the guidelines in these rules, ~~and subject to the permission of the institution or department of corrections.~~

(4) Notwithstanding the provisions of any of these procedural or technical rules, the panel or board may permit the use of other equipment provided the application for variance is made in advance. Ruling upon the variance application shall be in the discretion of the panel or board, ~~subject to permission of the institution or department of corrections to bring in or move equipment.~~

(5) The panel or board may limit or terminate photographic or electronic media coverage by any or all media participants at any time during the proceedings in the event the panel or board finds that rules in this chapter or additional rules imposed by the ~~institution or department of corrections~~ board or panel have been violated.

~~(6) The rights of motion picture and electronic coverage provided herein may be exercised only by persons or organizations which are part of the news media, except that individuals may use sound tape recorders.~~

b. *Advance notice of coverage.* All requests by representatives of the news media to use television cameras or electronic sound recording equipment in the interview room shall be made to the ~~institution~~ board in advance in accordance with ~~department of corrections~~ these rules.

c. *Equipment specifications.* Equipment to be used by the media or public in interview rooms or meeting rooms during interview proceedings or board meetings ~~held at the institutions~~ must be

unobtrusive and must not produce distracting sound. In addition, the equipment must satisfy the following criteria, where applicable:

(1) Still cameras. Still cameras and lenses must be unobtrusive, without distracting light or sound.

(2) Television cameras and ~~related~~ other recording equipment. Television cameras are to be electronic and, together with any related equipment to be located in the interview room, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras, and other recording devices, are to be designed or modified so that participants in the parole interview being covered are unable to determine when recording is occurring.

(3) Audio equipment. Microphones, wiring and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the proceeding being covered. Any changes in existing audio systems must be approved by the panel or board. No modifications of existing systems shall be made at public expense.

(4) Advance approval. It shall be the duty of media personnel to demonstrate to the panel or board reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this rule. Failure to obtain advance panel or board approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least 15 minutes prior to the scheduled time of commencement of the proceeding.

d. and e. No change.

f. Location of equipment and personnel. Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the interview room designated by the panel ~~or institutional staff~~. The area or areas designated shall provide reasonable access to the proceeding to be covered.

g. Movement during proceedings. Television cameras and audio equipment may be installed in or removed from the interview room only when the panel or board is not in session. In addition, the equipment shall at all times be operated from a fixed position. ~~Still photographers and broadcast media~~ Media personnel shall not move about the interview room while proceedings are in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

h. Decorum.

(1) ~~All still photographers and broadcast media personnel shall be properly attired and shall maintain conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body at all times while covering a parole proceeding. They shall be respectful of other media personnel, victims, spectators, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals working in the board's business office building or other ICN location where they may be while observing the parole interview.~~

(2) Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request may result in law enforcement being called to remove the offending party or parties.

ITEM 23. Amend rule 205—10.3(906) as follows:

205—10.3(906) Parole or work release agreement. A parole or work release agreement containing standard and special conditions of parole or work release shall be prepared without unreasonable delay following the board's issuance of the order for parole or work release. The board may change these standard conditions from time to time. Special conditions of parole may be imposed at any time in accordance with the needs of the parolee as determined by the board, the department of corrections, or the district department. The parole or work release agreement may provide for a search process and procedure of the parolee or work releasee. The parole or work release shall not commence until the inmate has signed the agreement, unless as otherwise prescribed by law. If the inmate is on work release status at the time parole is granted, the inmate shall remain on work release status until the parole agreement is signed by the parole officer and the inmate.

ITEM 24. Amend rule 205—11.1(906) as follows:

205—11.1(906) Voluntary termination of parole. Any voluntary termination of parole should be executed in writing by the parolee, reviewed by the parole officer, and approved by an administrative parole judge at a hearing. Upon the execution of the voluntary termination of parole, the parole officer shall file a preliminary parole violation information. If a parolee's parole is terminated ~~and~~, the parolee shall be returned to the Iowa Medical and Classification Center at Oakdale or the Iowa Correctional Institute for Women at Mitchellville as soon as ~~reasonably possible~~ practicable. ~~The administrative parole judge shall, after consultation with the parole officer, determine if the parolee shall be incarcerated prior to the parolee's return to the Iowa Medical and Classification Center. The parole officer shall make arrangements accordingly.~~ The parolee shall receive credit for the time spent on parole prior to the voluntary termination of parole as determined by the administrative parole judge.

ITEM 25. Amend rule 205—11.5(908) as follows:

205—11.5(908) Parole violations.

11.5(1) The parole officer shall report to the board any parolee who is reasonably believed to have engaged in any of the following types of behavior:

a. Violation of any federal or state laws, ~~except simple misdemeanors~~ which would be a felony or aggravated misdemeanor in the state of Iowa.

b. Any violent, ~~or~~ assaultive, ~~or~~ threatening conduct.

c. Possession, control or use of any firearms, imitation firearms, explosives or dangerous weapons as defined in federal or state statutes.

d. ~~Sale, possession, continual or problem use, transportation or distribution of any narcotic or other controlled substance or excessive use of alcohol by the parolee.~~ Any unapproved contact with victims or victims' family or with minors.

e. A parolee whose whereabouts are unknown and who has been unavailable for contact for 30 days, or about whom reliable information has been received indicating that the parolee is taking flight or absconding.

f. ~~Any behavior indicating that the parolee may be suffering from a mental disorder which impairs the parolee's ability to maintain the parolee in the community or which makes the parolee a danger to the parolee or others when the mental disorder cannot be adequately treated while the parolee is in the community.~~

g. ~~Any other conduct or pattern of conduct in violation of the conditions of parole deemed sufficiently serious by the parole officer.~~

11.5(2) The parole officer or supervisor is authorized to ~~sanction~~ report any other parolee misconduct or pattern of misconduct not required to be reported above.

ITEM 26. Amend rule 205—11.6(908) as follows:

205—11.6(908) Parole violation report. The parole violation report is a document prepared by the parole officer on a form or medium provided by the board specifying the parole violation charges against a parolee and containing or referring to information known to the parole officer relevant to the charges.

11.6(1) ~~Supplemental parole violation~~ Violation report update. A ~~supplemental parole violation report update~~ may be submitted to report sufficient new information or evidence which proves or disproves violations previously charged; report new violations; note court action on charges which are being prosecuted in a criminal proceeding; expand, clarify, or correct information in an earlier report; provide the board with information not related to the violation but which may affect the board's decision regarding the appropriate disposition; provide additional requested information to the board at any time; or change the parole officer's recommendation. A ~~supplemental violation report update~~ shall be filed upon the apprehension of a parolee on absconder status. The violation report update shall be served in accordance with subrule 11.7(1).

11.6(2) Recommendations. The parole officer shall ~~recommend~~ review the information available and, upon consultation of policy and with the supervisor or designee, make evidence-based, informed

recommendations as to the appropriate disposition action necessary to deal with the alleged violation. In a parole violation report, the parole officer may make one of the following recommendations:

a. Continue on parole. This recommendation may be used when a violation charge is not serious enough to warrant reincarceration. A copy of the violation report containing a “continue on parole” recommendation shall be personally delivered and explained to the parolee by the parole officer, and the parolee shall be given an opportunity to admit the alleged violations. Admitted violations contained in the report may be used to adjust time calculations in a later revocation proceeding. In the event that a dispute arises as to alleged violations, the parolee may request a parole hearing. An administrative parole judge shall review the violation report and enter an order either affirming the recommendation to continue on parole or scheduling the matter for a parole revocation hearing.

A parolee shall be allowed only two violation reports containing a “continue on parole” recommendation in a 12-month period, after which a parole revocation hearing must be scheduled.

Generally, violations occurring more than 12 months prior to the request for a parole revocation hearing will not be used to adjust time calculations, except in absconder cases and related matters.

b. Schedule for revocation proceedings. This recommendation may be used whenever the violation(s) alleged is so serious that reincarceration is necessary.

c. Delay action. This recommendation is used when there is a lack of information at the time the report is submitted or because charges are still pending and final disposition is unknown or the whereabouts of the parolee are unknown. The parole officer shall notify the board of the reason(s) for the recommendation to delay action.

d. Issue a detainer. This recommendation is used to request that an Iowa detainer be placed against an Iowa parolee who is serving time in another jurisdiction for an offense committed while on parole which would constitute a felony or aggravated misdemeanor if committed in Iowa.

e. Continue on parole and impose special condition 209A of the parole agreement, participation in the violator’s program. This recommendation may be used when there has been a violation of parole, but treatment in the violator’s program is seen as a reasonable alternative to revocation of parole.

f. Automatic revocation. This recommendation may be used when a parolee has been convicted of and sentenced for a new felony committed while on parole or when the parolee is convicted and sentenced to incarceration in a state correctional institution for an aggravated misdemeanor committed while on parole.

11.6(3) No change.

ITEM 27. Amend rule 205—11.7(908) as follows:

205—11.7(908) Parole revocation hearing. Following receipt submission of a parole officer’s request for a parole revocation hearing, the administrative parole judge or board’s designated parole officer shall set the date, time and place of schedule the parole revocation hearing and shall cause a notice of parole revocation hearing to be completed. The parole revocation hearing shall be held in any county in the same judicial district as that in which the alleged parole violator had the initial appearance, or in the county from which the warrant for the arrest of the alleged parole violator was issued.

11.7(1) Parole revocation hearing notice. The parole officer or board’s designated officer shall cause to be prepared a written notice to the parolee, and parolee’s attorney, if applicable, of the date, time, and place of the parole revocation hearing, which shall:

a. Include a complete copy of the report of violations, and updated report if applicable, including all documents referred to therein except confidential material defined in 205—subrule 6.4(2).

b. Be served upon the parolee by personal service. The notice may be served by any person 18 years of age or older at least seven days prior to the parole revocation hearing unless the parolee waives the right to seven days’ advance notice.

c. Inform the parolee of the purpose of the hearing, the violations of parole conditions alleged, the circumstances of the alleged violations, the possible action which may be taken as a result of the revocation proceedings, and the following rights to which the parolee shall be entitled at the parole revocation hearing:

(1) To appear and speak ~~in~~ on the parolee's own behalf and to be aided by an interpreter if aid is determined to be necessary by the administrative parole judge.

(2) To be represented by an attorney or, if the parolee is indigent, the right to be represented by an attorney pursuant to Rule 2.28 of the Iowa Rules of Criminal Procedure and Iowa Code section 908.2A.

(3) To remain silent.

(4) To present witnesses to testify on the parolee's behalf as to matters relevant to the alleged violation of parole.

(5) To confront and cross-examine adverse witnesses unless the administrative parole judge determines that such witnesses would be subjected to risk of harm.

(6) To present documentary evidence and any relevant material or information.

11.7(2) to 11.7(5) No change.

11.7(6) *Witnesses.*

a. to c. No change.

d. Fearful witnesses. All witnesses who refuse to attend the hearing either because they would be subjected to risk of harm if their identities were disclosed or who, even if their identities were known, fear for their safety should they attend the hearing shall be interviewed by the parole officer prior to the hearing, and their information and the reasons for their fear shall be documented in writing or on ~~tape~~ the record. The officer must assess whether this testimony is necessary to proceed with prosecution of parole violations. If there are other alleged violations that merit a recommendation of revocation, this testimony may not be necessary. The administrative parole judge shall determine whether good cause exists to excuse a witness's attendance and shall document the decision including the reasons.

e. No change.

11.7(7) *Subpoenas—general.* Subpoenas may be issued by the board of parole to require the attendance of witnesses or the production of documents at parole revocation hearings.

a. Who may request. The parolee, the parolee's attorney, parole officer, or board staff may request that a subpoena be issued. The requested witness(es) should be contacted prior to issuance of the requested subpoena. If the parolee is pro se, the parole officer may need to make contact.

b. To whom made. Requests ~~shall~~ may be made directly to the administrative parole judge, ~~or~~ the board's designated officer, or the parole officer, as appropriate. The parole officer shall provide the necessary information to the board of parole in order to process the request.

c. When made. The request shall be made prior to the scheduled hearing.

d. Subpoena duces tecum. The request for a subpoena duces tecum shall be accompanied by a declaration in support of the request. The declaration must show good cause for production of documentary evidence and specify precisely the documentary evidence to be produced, the relevance and materiality of that evidence to the hearing, and verification that the requested witness has possession or control of the documentary evidence.

e. Costs. The board of parole shall not be required to pay subpoena service fees, witness fees, or witness transportation expenses.

11.7(8) *Continuances.*

a. A hearing may be continued by the presiding administrative parole judge for good cause shown, either upon the presiding judge's own motion or upon the request of a party. A party's request for continuance shall be made in writing to the ~~board's business office~~ administrative parole judge prior to the hearing. Each party shall be granted only one continuance ~~except that in the case of extreme emergency, determined by the presiding administrative parole judge, further.~~ Further continuance may be granted for good cause.

b. If, because of an emergency or other good cause, a party having received timely notice is unable to attend the hearing or to request continuance within the allotted time, the presiding administrative parole judge may continue the hearing and schedule another hearing with notice to all interested parties.

c. ~~A notice~~ Notice of continuance may be served upon the parolee's attorney of record for the parole revocation proceeding, in lieu of personal service upon the parolee.

d. ~~If a notice of continuance does not involve any new allegations of parole violation, it need not be served upon the parolee or the parolee's attorney of record at least seven days prior to the hearing~~

~~date. However, if~~ If the notice of continuance includes allegations of violations beyond those contained in the original notice of hearing, it must be served upon the parolee or the parolee's attorney of record at least seven days prior to the hearing date in accordance with subrule 11.7(1).

11.7(9) Areas of responsibility. The following areas of responsibility will apply for a parole revocation hearing.

a. The parole officer shall be responsible for the following:

(1) Coordinating and scheduling location, security, and control of the parole revocation hearing ~~in a courtroom unless good cause is established prior to the hearing;~~

(2) to (8) No change.

b. The administrative parole judge shall be responsible for the following:

(1) Maintaining records on all hearings ~~in the field;~~

(2) ~~Advising the business office regarding progress of each case;~~

(3) ~~Forwarding to the business office all materials and forms when hearings are completed.~~

11.7(10) Parole revocation hearing—adjudication.

a. to d. No change.

11.7(11) Parole revocation—hearing summary and order. The administrative parole judge or the board's designated officer shall forward a summary of the parole revocation hearing to the parolee, the parolee's attorney, the parole officer, and the board office as soon as reasonably possible following the parole revocation hearing. The summary of the parole revocation shall consist of a summary of the proceeding and shall contain the judge's findings of fact, conclusions of law and disposition of the matter.

11.7(12) Parole revocation hearing—conduct of the media. The provisions governing the conduct of the media at parole interviews as set out in 205—subrule 8.14(4) shall also apply to parole revocation hearings, except that decisions committed to the discretion of the board or board panel in that rule shall be made by the presiding administrative parole judge.

11.7(13) Motions and requests. Any motion or request shall be submitted to the administrative parole judge or the board's designated officer, with copies to all parties, prior to the hearing. The parolee or parolee's attorney may submit any motion or request directly to the administrative parole judge, or designee, or through the parole officer. The board of parole does not utilize EDMS for submissions or notifications.

ITEM 28. Amend rule 205—11.8(908) as follows:

205—11.8(908) Appeal or review. The order of the administrative parole judge shall become the final decision of the board of parole unless, within ten days of the date of the decision, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion. ~~On appeal or review of the judge's decision, the board panel has all the power which it would have in initially making the revocation hearing decision. The appeal or review shall be conducted pursuant to rules adopted by the board of parole. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge. Appeals must be received at the parole office or be postmarked by the applicable date or they will not be considered.~~

11.8(1) General. On appeal or review of the judge's decision, the chairperson or board panel's designee has all the power which the administrative parole judge would have in initially making the revocation hearing decision. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge. Appeals must be received at the parole business office or postmarked by the applicable date or they will not be considered. An order continuing disposition is not a final order and therefore is not appealable. The board shall give notice of its decision to the parolee.

11.8(2) Grounds. All grounds shall be included in the same appeal, and all necessary documents and information shall be attached to the appeal. The general grounds for an appeal include that the board action is:

a. In violation of constitutional or statutory provisions;

b. In excess of the statutory authority of the board;

c. In violation of a board rule;

- d. Made upon unlawful procedure;
- e. Affected by other error of law;
- f. Unsupported by evidence or based on incorrect or incomplete information which, if correct or complete, might have resulted in a different action;
- g. Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of decision.

11.8(3) Filing an appeal. An appeal shall be filed in writing and shall state:

- a. The particular action which is the subject of the appeal.
- b. The grounds on which relief is sought.
- c. The relief sought.

ITEM 29. Amend rule 205—11.11(908) as follows:

205—11.11(908) Waivers.

11.11(1) When the parole officer makes a ~~recommendation request~~ to the board of parole for a revocation of parole hearing, the parole officer shall inform the parolee of the parolee's rights ~~and afford the parolee the opportunity to execute a waiver of parole revocation hearing.~~

11.11(2) The parole officer shall also inform the parolee of the opportunity to waive the parolee's right to personal appearance and consent to the parole revocation hearing's being conducted over the telephone.

~~**11.11(1) Waiver of parole revocation hearing.** A waiver of parole revocation hearing shall constitute an admission of the alleged violation(s) and shall include a waiver of any right to a personal appearance before the administrative parole judge to contest the violations.~~

~~**11.11(2) Parole revocation hearing waiver procedures.** If the parolee desires to execute a waiver of parole revocation hearing, the waiver shall be entered on the appropriate form provided by the board which shall be signed by the parolee in the presence of the administrative parole judge or by the parolee in the presence of the parole officer/supervisor if the waiver hearing is conducted electronically. The administrative parole judge shall make a verbatim record of the waiver proceeding and shall address the parolee personally and inform the parolee of and determine that the parolee understands the contents of the waiver form which shall include:~~

- ~~a. The nature of the parole violation to which the waiver is addressed;~~
- ~~b. The legal rights of the parolee;~~
- ~~c. The fact that the execution of the waiver constitutes an admission of the alleged violation(s);~~
- ~~d. The fact that the parolee may be committed to the custody of the Iowa department of corrections without further proceedings;~~
- ~~e. The fact that the waiver is complete and final upon execution;~~
- ~~f. The fact that the waiver may be appealed according to the parole board's parole revocation appeal process in rule 205—11.8(908).~~

11.11(3) Waiver of the right to personal appearance. In the event the parolee executes a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the parole revocation hearing shall be scheduled and conducted as a routine parole revocation hearing with the exception that it shall be conducted by telephone. In the event the parolee does not execute a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the hearing shall be scheduled and may, at the discretion of the administrative parole judge, be conducted electronically by videoconference.

ITEM 30. Amend rule 205—14.1(902) as follows:

205—14.1(902) Interviews of inmates serving life terms without the possibility of parole. The board shall not grant a parole or work release to a Class "A" felon serving a life term without the possibility of parole unless the governor commutes the sentence to a term of years. Administrative rules relating to the parole and work release consideration of an inmate sentenced to an indeterminate term shall not apply to an inmate sentenced to a life term without the possibility of parole. The board shall interview

~~a Class “A” felon serving a life term to determine whether to recommend that the governor commute the sentence to a term of years. The board shall recommend that the governor commute the sentence when the board concludes that the inmate should be considered for release on parole or work release. In making such a recommendation, the board shall also indicate the existence of any registered victims and communicate any opinions expressed by those victims regarding release of the inmate.~~

ITEM 31. Amend subrule 14.6(2) as follows:

14.6(2) Parole board commutation investigation process.

a. to c. No change.

d. The board shall attempt to provide notice of the commutation ~~investigation~~ interview to any individual who would qualify as a victim under Iowa’s victim notification law. Notice shall be by regular mail to the last-known address. The notice shall provide a specified amount of time for the victim to provide a statement to the board regarding the application for commutation.

e. and f. No change.

ITEM 32. Amend subrule 14.6(3) as follows:

14.6(3) Recommendation and report.

a. The board shall vote on a recommendation regarding the application. Any decision to recommend commutation shall be by unanimous vote. The board may continue the matter until such time as the board may determine by majority vote.

b. The board may consider any factor it deems appropriate when considering commutation including, but not limited to, the nature and circumstances of the crime, the number of years the applicant has served, the applicant’s previous criminal record, the applicant’s conduct while confined, the impact on the victim, and the public interest.

c. The board shall prepare a written report of its findings and recommendations and forward its report to the governor.

d. In making such a recommendation, the board shall also indicate the existence of any registered victims and communicate any opinions expressed by those victims regarding release of the inmate.

ITEM 33. Amend rule 205—15.1(17A) as follows:

205—15.1(17A) General. An inmate, parolee, or work releasee may appeal any action of the board staff or board that affects that person except a decision to schedule a hearing or a work release transfer hearing decision, ~~the denial of an appeal decision, or the decision to conduct an appearance by electronic means, or the revocation of parole which shall be appealed according to the procedure indicated in rule 205—11.8(908).~~

ITEM 34. Rescind and reserve rules **205—15.5(17A)** and **205—15.6(21)**.

ITEM 35. Amend subrule 16.5(2) as follows:

16.5(2) Other. If the petition does not relate to a pending contested case, the petition may be submitted to the board’s ~~executive director~~ chairperson.

ITEM 36. Amend rule 205—16.7(17A) as follows:

205—16.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner’s request, schedule a telephonic, electronic, or in-person meeting between the petitioner and the board’s ~~executive director~~ chairperson, a committee of the board, or a quorum of the board.